



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Elizabeth Beacham White
Clark Hill PLC
601 Pennsylvania Avenue, NW
North Building, Suite 1000
Washington, DC 20004

NOV 15 2017

RE: MUR 6953
McSally for Congress

Dear Ms. White:

On August 11, 2015, the Federal Election Commission notified your clients, McSally for Congress and Paul Kilgore, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on November 1, 2017, exercised its prosecutorial discretion and dismissed the allegations in this matter. Accordingly, the Commission closed its file in this matter on November 1, 2017. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

If you have any questions, please contact Wanda Brown, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Jordan".

Jeff S. Jordan
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: McSally for Congress MUR 6953
Paul Kilgore as treasurer

I. INTRODUCTION

This matter was generated by a Complaint alleging that McSally for Congress and Paul Kilgore in his official capacity as treasurer (the "Committee")¹ violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by failing to disclose donor information in reports filed with the Commission.² The Commission dismissed the allegations that the Committee violated 52 U.S.C. § 30102(c) and 11 C.F.R. § 104.7(b) pursuant to the Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985).

II. FACTUAL AND LEGAL ANALYSIS

The Complaint alleges that the Committee failed to include employer and occupation information for over 70.5 percent of its donors in its 2015 April and July Quarterly reports; 189 of 269 donors who contributed to the Committee from January 1, 2015, to March 31, 2015, and 675 of 956 donors who contributed to the Committee from April 1, 2015, to June 30, 2015.³ The

¹ McSally for Congress is the authorized Committee for Martha McSally, U.S. Representative from Arizona's second Congressional district. McSally was re-elected in 2016.

² Compl. at 2 (Aug. 4, 2015).

³ *Id.* The Complaint is based on a news article that summarizes reporting errors, most of which were the subject of Requests for Additional Information sent to the Committee by the Commission's Reports Analysis Division ("RAD"). Dylan Smith, *Errors in McSally Campaign Reports Add up to Millions*, TUSCON SENTINEL.COM, July 17, 2015 at http://www.tucsonsentinel.com/local/report/071715_mcsally/errors-mcsally-campaign-reports-add-up-millions/.

1 Complaint also cites to information suggesting that the Committee failed to disclose the
2 employer and occupation for 26 percent of its donors in the 2014 election cycle.⁴

3 The Committee acknowledges that its 2015 April Quarterly and July Quarterly reports
4 were missing employer and occupation information, but avers that it had procedures in place to
5 comply with the Commission's "best efforts" requirements, including: (1) printed solicitations
6 that included requests for contributor information and a statement of the Act's requirement to
7 collect the information; (2) printed follow-up requests for missing information; and (3) amending
8 disclosure reports to include missing contributor information.⁵ Further, the Committee indicates
9 that as a result of follow-up requests, it had obtained missing information for 330 individual
10 contributors from the 2016 election cycle and was in the process of amending its disclosure
11 reports.⁶ The Committee also maintains that it similarly used best efforts to obtain information
12 from its 2014 campaign contributors and notified each of their obligation to provide the
13 information.⁷

14 Political committees must keep records of all contributions received by or on behalf of
15 the committee, the name and address of any person who makes a contribution in excess of \$50,
16 and the occupation and name of employer of any individual whose contributions aggregate more
17 than \$200 during an election cycle to an authorized committee.⁸ When the treasurer of a political

⁴ *Id.*

⁵ Resp. at 1 (Sept. 29, 2015). *See also* Resp. Exhibits A and B (solicitations from the 2016 election cycle that request employer and occupation information and state that the Committee must exercise "best efforts" to obtain the information, and a sample follow-up letter and a list of letter recipients).

⁶ *Id.*

⁷ *Id.*

⁸ 52 U.S.C. § 30102(c); 104.3(a)(4)(i).

1 committee shows that best efforts have been used to obtain and disclose the information required
2 by the Act, any report or any records of such committee shall be considered in compliance with
3 the Act.⁹ Best efforts includes, *inter alia*, making a clear request for the contributor's full name,
4 mailing address, occupation and name of employer, and including an accurate statement of
5 Federal law regarding the collection and reporting of individual contributor identifications on
6 committee solicitations.¹⁰ Further, for contributions aggregating more than \$200 per election
7 cycle (in the case of an authorized committee) which lack required contributor information, the
8 treasurer shall, within 30 days of receipt, make at least one effort, either by written or oral
9 request, to obtain the missing information.¹¹ If contributor information is obtained after the
10 contribution has been included in disclosure reports, the committee shall amend its reports or
11 include the information with its next scheduled report.¹²

12 A review of the Committee's disclosure reports indicates that the Committee did not
13 include employer and occupation information for all contributors. However, the Committee
14 amended the 2015 disclosure reports at issue to include at least some of the missing information.
15 Further, the Committee, in response to RAD's Requests for Additional Information, submitted
16 information regarding its best efforts procedures and the steps the Committee took to obtain
17 missing contributor information. RAD has indicated that the Committee provided an adequate
18 description of its best efforts procedures for the 2016 election cycle and amended its reports to
19 provide additional employer and occupation information.

⁹ 52 U.S.C. § 30102(i).

¹⁰ 11 C.F.R. § 104.7(b)(1)(i) and (ii).

¹¹ 11 C.F.R. § 104.7(b)(2).

¹² 11 C.F.R. § 104.7(b)(4)(1). *See also* 11 C.F.R. § 104.7(b)(4)(ii) (committees are not required to file amendments for previous election cycles).

1
2
3 Given the Committee's corrective actions and its best efforts procedures to obtain
4 missing contributor information, and in furtherance of the Commission's priorities, relative to
5 other matters pending on the Enforcement docket, the Commission exercised its prosecutorial
6 discretion to dismiss the allegation that McSally for Congress and Paul Kilgore in his official
7 capacity as treasurer violated 52 U.S.C. § 30102(c) and 11 C.F.R. § 104.7(b).¹³

¹³ *Heckler v. Chaney.*